Supreme Court, U.S.
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No. 96-1725

In The

Supreme Court of the United States

October Term, 1996

ROBERT J. SCALLET,

Petitioner,

v.

JOHN R. ROSENBLUM, *et al.*,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the two courts below erred in concluding that no reasonable juror could "find that [respondents] retaliated against [petitioner] for his in-class speech, his advocacy in faculty meetings, or because of the posted articles and cartoons outside his office." Pet. App. 4a.

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STATEMENT OF THE CASE[1]

Petitioner was a non-tenure-track instructor employed on a series of annual contracts by the Darden Graduate School of Business Administration at the University of Virginia to teach in its required first-year writing and speech course ("Analysis and Communications," known as "A & C"). From the fall of 1988 to the spring of 1991 petitioner served as "Course Head" of A & C, with general administrative responsibility for the development of curricular proposals and the delivery of instruction.

In the spring of 1991 respondent Robert Harris, then the Associate Dean of Faculty at Darden, demoted petitioner and relieved him of his "Course Head" duties in response to numerous complaints from colleagues, especially those he supervised in A & C, concerning his confrontational style of management and dysfunctional interpersonal relations. Even after his demotion, complaints about petitioner's divisive and bullying manner continued unabated. In all, respondents, then the Dean and two Associate Deans of Darden, received more than forty complaints from other faculty about petitioner's volatile and harassing behavior over a four-year period. Finally, in May of 1992, respondents informed petitioner that, while he would be retained for one more year, he

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[1] The cover sheet to the petition incorrectly identifies the court below as the United States Court of Appeals for the Second Circuit. The decision sought to be reviewed was rendered by the United States Court of Appeals for the Fourth Circuit.

would be given no teaching responsibilities, and his contract would not be renewed beyond the spring semester of 1993.

Petitioner grieved the non-renewal of his contract unsuccessfully with the Faculty Senate of the University of Virginia and then brought suit in the United States District Court for the Western District of Virginia against respondents, the University of Virginia, and a number of other Darden faculty members, asserting a wide variety of claims under both state and federal law.

All of petitioner's claims were dismissed by the district court, some under Fed. R. Civ. P. 12(b)(6) and some on summary judgment. Petitioner appealed only the grant of summary judgment on his claim that respondents' failure to renew his contract violated his right of free speech under the First Amendment. *See* 911 F. Supp. 999, Pet. App. 6a. The United States Court of Appeals for the Fourth Circuit unanimously affirmed the district court's grant of summary judgment in an unpublished *per curiam* opinion. Pet. App. 1a.

After reviewing petitioner's various First Amendment arguments and the extensive undisputed record of his misconduct, the district court found:

> As discussed at length above, the record indicates that Scallet's conduct was disruptive and that the entire A & C faculty had severe problems working with him. Indeed, some of his conduct bordered on sexual harassment. Although Scallet maintains that these proffered reasons for his non-renewal are pretextual, he simply has not mustered sufficient evidence to demonstrate to a jury that defendants retaliated

> against him either for his advocacy in faculty meetings or because he posted articles and cartoons outside his office. In light of the wealth of evidence supporting defendants' non-retaliatory motivation for failing to renew Scallet's contract, the court concludes that defendants have carried their burden for summary judgment.

911 F. Supp. at 1020-21, Pet. App. 48a-49a.

The court of appeals, after conducting a *de novo* review of the record, agreed:

> The record is clear that the speech which Scallet contends is protected was not the cause of Appellees' failure to renew his contract. Specifically, answers to interrogatories and depositions of faculty members establish that numerous complaints were made to each Appellee during the years leading up to the nonrenewal decision. These complaints described a confrontational style that made other writing teachers feel physically and emotionally threatened, and that in some cases did, as the district court said, border on sexual harassment. The record reveals that some of these complaints led to Scallet's removal from the course head position a year before the nonrenewal decision. After his demotion, faculty members continued to complain about the same conduct and Appellees personally observed strained relations in the writing department. Based on the numerous complaints and personal observations, Appellees made the decision not to renew Scallet's contract.
>
> We agree with the district court that Scallet has failed to raise genuine issues as to the actual

> reasons for his non-renewal which require resolution by the trier of fact. *A reasonable juror could not find that Appellees retaliated against Scallet for his in-class speech, his advocacy in faculty meetings, or because of the posted articles and cartoons outside his office.*

Pet. App. 3a-4a (emphasis added).

REASONS TO DENY THE WRIT

This Case Presents No Issues of National Significance, but Turns Solely Upon the Factual Determinations of the Two Courts Below.

This is not a case about academic freedom. It is a case about a university's right to refuse to renew the contract of a disruptive faculty member and course supervisor who bullied and threatened each colleague he was assigned to supervise and who continued his confrontational ways even after being demoted from his supervisory position and given a last chance to prove he could work with others.[2] The district court and the court of appeals both found that the evidence of petitioner's misconduct was so overwhelming that no reasonable juror

[2] Petitioner speaks of his "termination," Pet. 3, and his "firing," Pet. 15 n.5, but this glosses over a crucial distinction. In fact, petitioner was paid for the entire term of his contract with the University. This, coupled with his non-tenured status, meant that he had no property interest in continued employment, *Board of Regents v. Roth*, 408 U.S. 564 (1972), as the district court held in dismissing petitioner's due process claim under Fed. R. Civ. P. 12(b)(6). Thus petitioner's only potential constitutional claim was that he was retaliated against for protected speech in violation of the First Amendment.

could find that the Darden administration had retaliated against him for any arguably protected speech.

It is well established that this Court does not sit to review the sufficiency of factual determinations, particularly where they have been agreed upon by two lower courts. *E.g., Tiffany Fine Arts, Inc. v. United States,* 469 U.S. 310, 318 n.5 (1985); *United States v. Doe,* 465 U.S. 605, 614 (1984); *United States v. Reliable Transfer Co.,* 421 U.S. 397, 401 n.2 (1975). *See also, e.g., Southern Power Co. v. North Carolina Pub. Serv. Co.,* 263 U.S. 508 (1924); *Houston Oil Co. v. Goodrich,* 245 U.S. 440 (1918). This case presents nothing more than an intensely fact-bound issue resolved by the courts below under summary judgment standards that are quite clear. *See Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242 (1986); *Celotex Corp. v. Catrett,* 477 U.S. 317 (1986).

Despite its lengthy discussion of academic freedom, the petition is at bottom an extended quarrel with the findings of the courts below. *See* Pet. 11-15, 23-28. And while petitioner seeks to belittle the evidence of his misconduct, that evidence was cogently and powerfully summarized by the district court.[3] *See* 911 F. Supp. at 1006-07, Pet. App. 14a-16a. Particularly disingenuous is petitioner's expression of puzzlement at the conclusion of the two courts below that his conduct at least "bordered" on sexual harassment. Pet. 26-28. The district court pointed to undisputed evidence that petitioner engaged in a

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[3] A somewhat fuller summary of the undisputed evidence of petitioner's misconduct appears at pages 1a-17a of the Appendix to this Brief, where we have reproduced material from pages 7-22 of respondents' brief as appellees in the court of appeals.

"heated confrontation in a basement classroom . . . [with a female colleague] who was eight months pregnant at the time," which left her "absolutely white and shaking . . . [so that] she could hardly speak," and who "thereafter feared Scallet, refusing to work with Scallet alone, or even to be in the building with him at the same time." 911 F. Supp. at 1007, Pet. App. 14a. The district court also detailed evidence of petitioner's "altercations with other female A & C instructors" and his subjection of one woman "to unwelcome details of his sex life." *Id.*, Pet. App. 15a.

Petitioner sought to minimize or explain some of the details of this evidence in his deposition, but the question before the courts below was not whether each event occurred exactly as described by the complainant, but whether in deciding not to renew his contract, respondents acted in response to these complaints and not in retaliation for any protected speech. The findings of the two courts below were plainly correct.

CONCLUSION

For the foregoing reasons, the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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APPENDIX

(a)

Complaints To Darden Administrators About Appellant's Poor Management Of A&C

During the four years Mr. Scallet served as the course head of A&C his behavior was the subject of serious complaints to the Darden administration from at least thirteen of his colleagues, including all of the A&C instructors he was assigned to manage.[3] Mr. Scallet now claims that these complaints were but pretexts to punish him for his efforts to inject unwanted issues of gender and ethnic diversity and business ethics into the A&C curriculum. For purposes of review in this Court, however, it is important to emphasize that, while appellant now quarrels with the accuracy of some, but not all, of the complaints (many of which are not susceptible of "objective" verification because they involved his style of personal interaction with others), he does not and cannot dispute that the complaints were made, as the deans and his colleagues have all sworn without contradiction.

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[3] This number does not include the appellees themselves, each of whom observed unacceptable behavior on appellant's part and reported it contemporaneously to the other two. *See infra* notes 4-6. Thus counting the deans, a total of sixteen individuals reported adversely on appellant's conduct.

Thus between May 1989 and May 1992, Dean Rosenblum received specific complaints about appellant's unprofessional and dysfunctional behavior from at least *eleven* Darden deans and faculty members.[4] During academic years 1990-91 and 1991-92 Associate Dean Robert Harris received approximately *twenty-five* complaints about appellant from at least *fourteen* faculty members.[5] And Associate Dean Ray Smith received complaints about Mr. Scallet's behavior from *six* faculty between March and May of 1992 alone.[6]

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[4] App. 104-107 & 891-894. The complaints were from A&C instructors Elizabeth Denton (App. 230-231), Paula Wenger (App. 404-405 & 425), Virginia Germino (App. 256 & 977 & 988), Thomas Helscher (App. 279-278), John Howard (App. 235-236), James Rubin (App. 256), and Robert Vaughan (App. 243), as well as tenured faculty member Melissa Birch (App. 285-286 & 373), and Associate Deans Edward Freeman (App. 264-265 & 875-878), Charles Meiburg (App. 878), Robert Harris (App. 125 & 834-835), and Ray Smith (App. 137).

[5] App. 121-125 & 430-434 & 769-779. The complaints were from former Associate Dean Ed Freeman (App. 264-266), Dean John Rosenblum (App. 121), Paula Wenger (App. 404-405 & 941-942), Virginia Germino (App. 256 & 956-957 & 978-979 & 982), William Rotch (App. 431), Alan Beckenstein (App. 289-290), Robert Vaughan (App. 242-243), William Lyne (App. 1036-1040), Thomas Helscher (App. 279-280), Elizabeth Denton (App. 231), John Howard (App. 235-236 & 239), Warren Arbogast (App. 248), James Rubin (App. 252-256), and Ray Smith (App. 137 & 918 & 940-942).

[6] App. 135-137 & 918-925. The complaints were from Melissa Birch (App. 285), John Howard (App. 235-236), Thomas Helscher (App. 279-280), Robert Vaughan (App. 243), Virginia Germino (App. 256 & 982), James Rubin (App. 256), as well as his two fellow administrators, Dean Rosenblum and Associate Dean Harris (App. 107 & 125).

Beginning in 1989, A&C instructor Elizabeth Denton reported what she perceived as Mr. Scallet's abusive and unfounded assertion of the authority to fire her to then Associate Dean of Faculty Charles Meiburg. App. 228. Ms. Denton reported in an exit interview to Dean Rosenblum that appellant's unremitting hostility to her was the principal reason for her decision to leave Darden altogether in May 1989. App. 230-231 & 846.

Ed Freeman, head of the Ethics Course, who has been an outspoken advocate of diversity and ethics issues at the Darden School for many years and whom appellant described as "Darden's conscience," succeeded Mr. Meiburg as Associate Dean of Faculty in the Fall of 1989. App. 261. He quickly detected serious problems with plaintiff's personal interactions. App. 263-265. He heard complaints from other faculty that plaintiff was confrontational and that he excluded other faculty from decision-making about the A&C course. App. 263-264. One instructor, William Lyne, a friend of Mr. Scallet, made clear to Mr. Freeman that he did not want to associate himself with appellant's aggressive, confrontational style. App. 263-264 & 1041-1043.[7] Mr. Freeman attempted to counsel appellant on his personal interactions, but the latter rebuffed him, saying "That's the way I do things." App. 265.

When appellee Robert Harris succeeded Ed Freeman as Associate Dean of Faculty the following year

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[7] Mr. Lyne testified that appellant used to brag about arguments he had in faculty meetings and how "he'd gotten the best of them in there." App. 1045.

(1990-91),[8] Mr. Freeman informed deans Harris and Rosenblum that appellant was difficult to work with and was not managing the A&C course well. App. 264-265 & 769 & 875-876. Mr. Rosenblum instructed Mr. Harris to monitor appellant's performance closely. App. 104-105.

During his first year as Associate Dean, however, Mr. Harris heard recurrent complaints about appellant's management style and interpersonal difficulties from his co-faculty in A&C, including Paula Wenger, John Howard, and Virginia Germino. App. 121-125. Near the end of that academic year, in May 1991, Paula Wenger reported to Mr. Harris her disagreement with appellant over a hiring issue. App. 1106-1107 & 822-823. At this point Mr. Harris, who, despite his busy schedule, had already been considering stepping into the management of the A&C course because of plaintiff's interpersonal difficulties, decided to take a more aggressive role in managing the course and explained his decision to plaintiff. App. 649-650 & 773-774.

Plaintiff admitted that there had been "historical fractiousness in the course" and that he was upset with Ms. Wenger for reporting a disagreement to the Associate Dean because he did not want his managment problems exposed:

> [W]e might not all get along great, we might have our disagreements, our problems; but let's keep it in-house. . . . Let's not get, you know, the

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[8] The rapid turnover in Associate Deans of the Faculty coinciding with plaintiff's tenure as A&C Course Head may help to explain the delay in realizing and focusing on plaintiff's interolerably uncollegial behavior. App. 880-881.

> institution all in a lather about us. And I was, I was particularly disturbed when Paula went to Mr. Harris because of that.

App. 703-704.

Feeling thus "particulary disturbed," appellant initiated a confrontation in a small, remote basement classroom with Ms. Wenger, who was then eight-and-a-half months pregnant. App. 283-285 & 684-695 & 1032-1036. William Lyne, an A&C instructor who witnessed Ms. Wenger's acute physical state of shock when she emerged from the confrontation, went immediately to Associate Dean Harris to tell him what had happened. App. 1036-1038. Ms. Wenger filed a written complaint with Associate Dean Harris and Dean Rosenblum in which she recounted her ordeal and requested that appellant be fired. She wrote:

> At around one o'clock on Thursday, May 2, Cid Scallet entered the Sponsors Hall dining room and approached me at the salad bar. Obviously angry, he said that he needed to talk to me right away, before I sat down. He led me out into the lobby, then down the stairs to the Sponsors Hall classroom, where he ordered me to shut the door. I didn't realize his anger was directed at me until he sat me down and demanded to know whether I had an appointment with you [Associate Dean Harris] at 10:30 on Tuesday morning to sabotage the hiring of Steven Brown and to discredit him as the manager of his staff. . . .
>
> He then launched a verbal assault that began with an insulting construction of how I had 'betrayed' him by not talking to him first. . . . In an irrational diatribe I could barely understand,

he insisted that, based on my conversation with you, you intended to take over the hiring process, sit in on meetings, pry into the activities of all A&C instructors, curtail his responsibilities. . . .

The entire barrage led up to his declaration that, because I had betrayed his trust, he refused to work with me from now on, he wanted to have nothing to do with me, he didn't want me "in his face."

. . . His parting shot, looking down from the top of the stairs, was, "And I also want you to think hard about how you would explain to my wife why she shouldn't hate you."

The tone of the entire episode was dictatorial, abusive, and irrational. The threat was compounded by the fact that he chose to stage it behind closed doors, far removed from anyone else in the building. I'll also point out the obvious facts that I am smaller than he is, female, and eight months pregnant.

Although this episode was harsher and more threatening than any I have so far experienced with Cid, it was driven by the distortions and aggression that have characterized confrontations with him that I, as well as many others on the A&C staff, have endured over the past three years. . . .

. . . Thursday's episode was only the latest in several over the past three years that demonstrate Cid's ability to create a hostile work environment and his habitual attempts to

> manipulate and intimidate other members of the A&C staff.

App. 404-405.

Apparently aware that he had crossed the line of acceptable behavior, appellant wrote his own account of the confrontation to Mr. Harris, in which he admitted to having been "deliberately harsh" and "scolding" toward Ms. Wenger:

> On Friday, May 3, I met with Paula and, in a conversation that lasted no more than ten minutes, told her some things in no uncertain terms. . . . In my conversation with Paula on Friday, May 3, I had some tough things to say to her and *I said them in a tough way: I was somewhat harsh. and I intended to be somewhat harsh, because I felt that her actions warranted a harsh reprimand*. . . . This was not my first intense discussion with Paula about her performance.

App. 406-413. The same day he acknowledged to another colleague that "the air is a touch thick between Harris and me right now." App. 414.

In a follow-up memo to Mr. Harris appellant again admitted that he had "scold[ed]" and "chastiz[ed]" Ms. Wenger and that this abusive encounter was part of "the larger context of my managerial difficulties with the A&C staff." App. 415.

Dean Rosenblum instructed Mr. Harris to investigate appellant's behavior. App. 773-774 & 819-820 & 889-891. The Dean was concerned that Mr. Scallet's harsh treatment of a woman in an advanced state of pregnancy could be deemed "sexual harassment." App. 820 & 890-891. Mr. Harris interviewed nine faculty members

about appellant. App. 431.[9] Based on those interviews, Mr. Harris made the following contemporaneous note to his file:

> To varying degrees I got the impression of someone who was quite paranoid about threats to his 'power' and who was quite volatile. He is apparently not working as a successful manager in A&C.

App. 431.

Eventually Mr. Harris concluded that while Mr. Scallet's actions bordered on "sexual harassment," a sounder description was simply "harassment" of a colleague. Harris Dep. at 401-404.[10] Mr. Harris then met with appellant and told him that his behavior toward Ms. Wenger was unacceptable and that he must improve. App. 415. Mr. Scallet acknowledged his problems and committed to improving:

> But above all else, I want to resolve the current problem. . . . I am not interested in having the current enmity between Paula and me weaken our efforts in A&C, nor do I want to remain in conflict with someone whom I still like personally. I truly want to work this matter out. . . . But

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[9] Seven of those interviewed testified to their conversations with Mr. Harris: Ed Freeman (App. 265-266), Elizabeth Denton (App. 231), Thomas Helscher (App. 279), Robert Vaughan (App. 242), William Lyne (App. 1037-1038), Alan Beckenstein (App. 290), and John Howard (App. 239).

[10] Designated by appellees for inclusion in the Joint Appendix but excluded by appellant.

> again, I am willing to keep working at it. . . . I await your advice and counsel.

App. 413.[11]

Following the investigation, Mr. Harris demoted appellant from all management responsibilities over other A&C faculty for academic year 1991-92. App. 419-423 & 773-774. Mr. Harris, a busy Associate Dean, assumed appellant's former responsibility for running A&C faculty meetings and facilitating curriculum development, and Mr. Scallet was relegated to teaching his section, making logistical arrangements, and suggesting curriculum ideas along with all other A&C faculty. App. 419-423 & 654-655 & 773-774.

Mr. Harris tried hard to salvage appellant's career at Darden because he valued Mr. Scallet's classroom skills, trusted his expressed commitment to working harmoniously with Ms. Wenger, and thought he could make it clear to the A&C faculty that appellant did not have reappointment authority over them, and because appellant's wife taught one of Mr. Harris's children that year in high school. App. 771-774 & 834-837. Dean Rosenblum concurred with that assessment. App. 879-881.

However, despite appellant's apparently contrite commitment to improve, complaints about him to Mr. Harris persisted during the following school year (1991-92), and Mr. Harris had the opportunity for closer observation of plaintiff's interactions with his colleagues. App. 774-779. In A&C meetings, he noted that the faculty

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[11] *See also* Harris Dep. at 381 (designated by appellees for inclusion in the Joint Appendix but excluded by appellant).

interacted dysfunctionally and that appellant bullied other instructors. App. 774 & 793-795 & 877. Moreover, during that academic year, James Rubin, a new A&C faculty member, reported to Mr. Harris confusion about the degree of plaintiff's authority over him and related plaintiff's departures from an agreed class assignment. App. 252-255 & 775-776.

Warren Arbogast, a technician in Darden's Audio & Visual Department, reported in the Fall of 1991 to Mr. Harris that Mr. Scallet had sabotaged his lecture to the A&C class by telling Mr. Arbogast to do one thing while the students were prepared for something entirely different. App. 245-248 & 774-775. When Mr. Arbogast confronted appellant about the switch, the latter "chuckled" and said "it will show up in Paula [Wenger]'s numbers," referring to Ms. Wenger's student evaluations. App. 247-248. Mr. Arbogast told Mr. Harris that he would never work with appellant again. App. 248 & 775.

Ms. Wenger reported to deans Rosenblum and Harris that the result of Mr. Harris' decision to relegate appellant to teaching "was not changing [his] behaviors; it was just driving them underground." App. 1161-1162. In February 1992, Ms. Wenger decided to leave the school in large measure because of the continuing abuse she had suffered from appellant. App. 425 & 1158-1159. She explained her decision to deans Harris and Rosenblum. App. 775 & 847 & 894. Thus she became the second woman in three years to tell the deans she was leaving Darden because of appellant's uncollegial and abusive behavior toward her. App. 230-231 & 846.

On the heels of Ms. Wenger's mid-semester departure, Professor Melissa Birch, a tenured Darden faculty member, lodged a complaint with Dean Rosenblum about Mr. Scallet in about March of 1992. App. 286 & 373 & 892. Professor Birch informed Dean Rosenblum that appellant had offended a female student by taking his shoes off in class, standing on a desk, and shouting obscenities, and that a female colleague had been subjected by plaintiff to graphic descriptions of his sex life. App. 286 & 373. Dean Rosenblum invited the unnamed female colleague to come forward, but Professor Birch told him that the woman was afraid of retaliation by appellant and would not come forward.[12] App. 286 & 374-375. Dean Rosenblum summoned Mr. Scallet to his office and relayed this information to him in the presence of Mr. Harris. App. 426-427. The dean said that he took the charges seriously. App. 426-427.

Shortly thereafter, Professor Birch went to inform Associate Dean Ray Smith separately about Mr. Scallet's sexual harassment of a colleague and to tell him that Paula Wenger had left Darden altogether because of appellant's behavior. App. 135 & 285. Before then, Mr. Smith had not been alerted to appellant's behavior problems. App. 135. Shortly thereafter, A&C instructor John Howard came to Mr. Smith's house on a weekend day to tell him about on-going problems in A&C attributable to Mr. Scallet and to say that low morale was affecting delivery of the course. App. 135 & 235 & 918-925.

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[12] Testimony in this case has revealed that the unnamed female colleague was Virginia Germino.

Still hopeful that things would work out, Mr. Harris had lunch with appellant in late April or early May of 1992 and told him he needed to work on his professional relationships with other A&C faculty, but that he (Mr. Harris) would recommend renewal of appellant's contract for the following year. App. 838-839.

At about the same time, appellant had an altercation with Mr. Smith in the latter's office.[13] App. 429 & 926-940. The altercation was reported to Mr. Harris. Unable to ignore any longer the powerful cumulative evidence of appellant's behavior and its effect on both his colleagues and the A&C course, Mr. Harris called a meeting of all A&C faculty (except Mr. Scallet) in early May to discuss the on-going problems in A&C. App. 777-778. What transpired at that meeting is not in dispute. In attendance

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[13] Concededly, what transpired on this occasion is in dispute. Mr. Scallet, for example, denied that he raised his voice at any point during the conversation, but in a contemporaneous apology he wrote to Mr. Smith he admitted that "conversations like one that we had earlier today are never pleasant," and added that "Yes, we were sharp with each other." *Compare* App. 621 (Scallet Dep. at 223:18-20) *and* App. 429 (Scallet May 1, 1991 Memo to Ray Smith and Robert Harris). Mr. Scallet further alleged that Mr. Smith said he did not like the "minority material" plaintiff had infused in the A&C curriculum and specifically referenced two cases Mr. Scallet had developed for the course. App. 611-612. Mr. Scallet also alleged that Mr. Smith said he "had been trying to get me fired for two years." App. 611-612. Mr. Smith testified that it was appellant who made these assertions about him and that he denied them. App. 926-931. Mr. Smith added that appellant physically confronted him and said "I don't like your attitude." App. 932. Mr. Scallet and Mr. Smith went swiftly but separately to Associate Dean Harris to tell him of the confrontation. App. 940.

were Tom Helscher, Robert Vaughan, Virginia Germino, John Howard, James Rubin, and appellees Rosenblum, Harris, and Smith. App. 256 & 777-778. The deans asked open-ended questions about how the A&C faculty was operating. App. 235-236 & 243 & 256. The members of the A&C faculty spoke at the meeting about problems they had encountered individually and as a group with appellant. App. 235-236 & 243 & 279-280 & 982.

At that meeting, Tom Helscher, appellant's closest friend at Darden, told the deans that "Cid had become increasingly difficult to work with and [the rest of the A&C faculty] had to teach a separate course from Cid . . . [which] created intolerable tension among [them]." App. 279-280. John Howard said that "Cid had undermined my reputation by telling Alan Beckenstein that I had missed classes when, in fact, I had not." App. 235-236. Robert Vaughan "spoke about the problems caused by Cid." App. 243. James Rubin told the deans that "A&C did not function professionally the way I thought a faculty unit should; we should not have to deal with so many tensions." App. 256. Virginia Germino spoke about Mr. Scallet's volatility and said she feared him. App. 256. As Tom Helscher put it, "Cid [Scallet] did not have a defender in the group because it was obvious he was responsible for much of the tension and difficulties described." App. 279-280. Appellant's abusive treatment of Paula Wenger was also discussed at the meeting. App. 238.

The three deans left that meeting and discussed the situation among themselves. App. 107 & 125 & 137. Dean Rosenblum concluded that despite appellant's demotion

ten months earlier, his behavior was not only unimproved, but the disruption in A&C was worse. App. 893-894. Mr. Harris, who weeks earlier had told plaintiff he would recommend renewal and who had remained hopeful for improvement, changed his mind after hearing about the persistent problems described by all five of his A&C colleagues. App. 837-840. In light of the May meeting, the three deans concluded that appellant lacked collegiality, had mismanaged the A&C faculty, and even though he had been stripped of most administrative duties a year earlier, was undermining the educational mission of the A&C course and Darden. App. 837-840 & 893-894. They decided that his behavior around his colleagues was too disruptive, had not improved, and that he should not teach at Darden any more. App. 107 & 125 & 137.

Mindful that he had told appellant he would recommend a renewal of his contract for the following year, Mr. Harris arranged for a turn-around year in which Mr. Scallet would receive full salary but not have an office in the school or teach any classes. App. 838-839.[14] Mr. Harris was concerned for Mr. Scallet's mental stability and consulted a psychological counselor. App. 827-829. He prepared notes for Dean Rosenblum and called a meeting with Mr. Scallet on May 26, 1992. App. 825-826 & 439.

At that meeting, Dean Rosenblum informed appellant that he and his two Associate Deans had decided to renew his contract for the 1992-1993 school year but not

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[14] *See also* Harris Dep. at 448 & 457-458 (designated by appellees for Joint Appendix but omitted by appellant).

thereafter. App. 107 & 125 & 137 & 382. During his final year, he was assigned some curricular duties but no teaching responsibilities. App. 382. Dean Rosenblum gave three reasons for appellant's non-renewal: (1) his uncollegial behavior toward his co-instructors in the A&C course, (2) his poor management of the A&C course and its staff, and (3) his disruption and undermining of the educational mission of Darden. App. 718-720.

(b)

Appellant's Admissions About His Uncollegial Behavior

While Mr. Scallet disputed the accuracy of some of the complaints about him, he could not, as noted above, dispute the fact that the complaints were made, and his own admissions about his conduct demonstrate the substantial problems he created for his colleagues and the administration at Darden. By his own testimony and contemporaneous accounts of events in memoranda, Mr. Scallet confirmed that he was aware of ongoing interpersonal problems with his A&C colleagues and others that made working with him difficult. For example, he admitted that he used obscene language in the classroom, which provoked student complaints. App. 753-755. He acknowledged that his disagreements with other A&C faculty were "personally unpleasant" on occasion. App. 519. He admitted to raising his voice at others at Darden. App. 749-750. While he denied having many dealings with Elizabeth Denton, he said he had some "intense discussions" with her. App. 705. He admitted to having

less than ideal relationships with Elizabeth Denton, Virginia Germino, and Paula Wenger. App. 758. He even admitted that he sometimes expressed himself "strongly" and that "[i]f that's regarded as confrontational, then I'm confrontational." App. 750. While he said that it was not his practice to criticize other A&C faculty to one another, he admitted criticizing John Howard behind his back to Paula Wenger.[15] App. 601.

In March 1991, he sent a memo to all A&C faculty recommending changes in their schedules without prior consultation with them, even though Paula Wenger had told him the recommended schedules were incompatible with Robert Vaughan's and John Howard's other commitments. App. 632-633 & 644-649. He conceded in a later memorandum to Mr. Harris that the earlier memo "caused enormous dismay and hostility" among the A&C faculty. App. 416-418.

Mr. Scallet admitted that Mr. Harris had told him in April or May 1991 that "he had heard two disturbing complaints about me, and that he was going to act on

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[15] Reflecting perhaps unconsciously on his leadership of the A&C group, appellant remarked that one of the reasons he avoided criticizing other A&C faculty members was that "[t]he people in this course were fractious enough among themselves that, that I wasn't going to, going to wretch that up." App. 602. Nevertheless, he admitted to "express[ing] frustration" about his colleagues to each other. Scallet Dep. at 579:2-19. Of course, it was the testimony of every other A&C instructor that plaintiff *regularly criticized* each of them behind their backs. Lyne (App. 998-1017); Helscher (App. 278-279); Vaughan (App. 241-242); Rubin (App. 255); Howard (App. 234); Arbogast (App. 248-249); Wenger (App. 1088); Germino (App. 967-968).

them by taking, assuming control of the course." App. 626. Appellant also acknowledged that, at the same time, Mr. Harris said he had concluded that "my management style was lacking." App. 649-650. Mr. Scallet told Mr. Harris in memoranda that he had a "desire to improve my management style," and that "Above all else, I want to resolve the current problem. . . . I am not interested in having the current enmity between Paula and me weaken our efforts in A&C." App. 413. Appellant also admitted that Mr. Rosenblum confronted him in the Spring of 1992 about Melissa Birch's charge of sexual harassment. App. 426-427 & 752-754 & 757-758.

Thus, there is little need for this Court to look beyond appellant's own admissions to conclude that the forty-plus complaints received by Darden's deans over a four year period had substantial merit and cumulatively justified their demotion of him in the Summer of 1991 and his non-renewal ten months later in May 1992.